UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN A. FREEMAN, II **Plaintiff,** **v.** **BILL LANN LEE, *et al.*,** **Defendants.**	**Civil Action 97-2279(HHK)**

MEMORANDUM AND ORDER

This suit is styled as one brought as a "combination Civil Rights action, Tort Claim action, and Administrative Procedures action." Compl. at 1. In a prolix 20 page handwritten complaint, Plaintiff, a prisoner incarcerated in the State of Virginia, proceeding *pro se* and *in forma pauperis*, alleges, *inter alia*, that the defendants' failure to investigate his complaints of constitutional violations by corrections officers at the Virginia Department of Corrections resulted in his physical abuse, segregation and "human rights abuses."

Presently before the court is the federal defendants' "Motion for Screening for Dismissal. " Upon consideration of the motion, the opposition thereto, and the record of this case, the court concludes that the motion should be denied because it is neither authorized by the Federal Rules of Civil Procedure nor the authority cited to support it.

The Prison Litigation Reform Act, Pub.L. No. 104-134, 110 Stat. 1321 (1996), requires United States District Courts to perform a "gate keeping" role.[1] This

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[1] The section of the Prison Litigation Reform Act relevant to this case is codified at 28 U.S.C. § 1915A, which provides in pertinent part:

(a) Screening.--The court shall review, before docketing, if feasible or,

role is accomplished when, in accordance with 28 U.S.C. § 1915A(a), a complaint against a governmental defendant filed by a prisoner allowed to proceed *in forma pauper* is "screened" for the purpose of determining whether there are certain grounds for dismissal. This case, like all other *pro se* prisoner cases filed in this Court containing an application to proceed *in forma pauperis,* was subject to the screening required by 28 U.S.C. § 1915A. [2] To the extent, then, that the defendants' "Motion for Screening for Dismissal" is filed for the purpose of bringing about a "screening" it should be denied because it is moot.

It is apparent, however, that it is not a "screening"which the defendants seek. Rather, citing 28 U.S.C. § 1915A as authority, they seek "[dismissal] sua sponte by the Court without full briefing by the parties." Defts' Mot. for Screen'g for Dismissal 1. The defendants' attempt to gain a *sua sponte* dismissal must be rebuffed for two reasons. First, a mere reading of 28 U.S.C. § 1915A dispels any notion that it provides a basis for governmental defendants to **seek** a dismissal or to otherwise play a role in the screening process. The text and the legislative history of 28 U.S.C. §

> in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.
> (b) Grounds for dismissal.--On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint--
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> (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or
> (2) seeks monetary relief from a defendant who is immune from such relief.

[2] In calendar year 1997, of the 646 cases screened, 337 were dismissed *sua sponte* by the court.

1915A clearly indicate that the drafters of this legislation contemplated that the screening required by § 1915A would be done--as has been done--without request by governmental defendants. Another reason for not entertaining the defendant's motion for "[dismissal] *sua sponte* by the Court" is because the motion is self contradictory and asks the court to do something that it literally can not do. *Sua sponte* is a latin term meaning "of his or its own will or motion; voluntarily; without prompting or suggestion." Black's Law Dictionary 1424 (6th ed. 1990). Therefore, there is no way, logically, to act *sua sponte* at the behest of another.

The defendants' invocation of 28 U.S.C. § 1915(e) does not support or add weight to their argument for a "Screening for Dismissal." Section 1915(e)(2) merely states, in pertinent, part that "[n]otwithstanding any filing fee, or any portion thereof, that may have been paid [by a prisoner litigant], the court shall dismiss the case at any time" if the court determines that there are certain grounds for dismissal, to wit, the same grounds as are contained in 28 U.S.C. § 1915A(b). Section 1915(e) simply clarifies that at any time the court must dismiss a prisoner's case should it determine that there are certain grounds for doing so. Section 1915(e) neither states nor suggests that its provisions provide a basis for governmental defendants to **seek** a dismissal.

One might ask why it makes a difference to this court whether governmental defendants move to dismiss a case brought by a prisoner proceeding *in forma pauperis* under the Federal Rules of Civil Procedure or attempt to achieve the same result by filing a "Motion for Screening for Dismissal," purportedly under 28 U.S.C. § 1915A. It suffices to say that the rules are the rules and all litigants, including

governmental defendants, must follow them. Governmental defendants simply should not be able to employ a procedure not authorized by lawmakers. More fundamentally, however, there is a vast imbalance of power and legal know how between prisoners proceeding *in forma pauperis* and governmental defendants who are invariably represented by lawyers. There is no reason to accentuate this imbalance even more by permitting government lawyers to achieve a secondary gain or tactical advantage by commandeering an illicit procedure.[3]

Accordingly, it is this 15th day of December, 1998, hereby,

ORDERED that defendants' motion captioned "Motion for Screening for Dismissal" is denied; and it is further

ORDERED that the plaintiff shall provide the full names and correct addresses of all defendants he is suing in their individual capacities by January 4,1999, or suffer dismissal without prejudice of those defendants from this action with respect to their alleged personal liability; and it is further

ORDERED that the defendants are granted until January 28, 1999,

to file a dispositive motion as to plaintiff's amended complaint.

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[3] One such secondary gain is that when a court dismisses a case after screening on the grounds that the complaint is "frivolous, malicious, or fails to state a claim upon which relief may be granted," the prisoner incurs a "strike." If three civil actions filed by a prisoner are dismissed on one of these grounds, under 28 U.S.C. § 1915(g). the prisoner is prohibited, thereafter, from proceeding *in forma pauperis.*.

Henry H. Kennedy, Jr.
United States District Judge